BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER THE	Resource Management Act 1991 ("**RMA**")
IN THE MATTER OF	The Proposed Kaipara District Plan ("**PDP**"): Hearing Topic 10 – Māori Purpose Zone, and Hearing Topic 11 Sites and Areas of Significance to Māori

STATEMENT OF EVIDENCE OF TE PUAWAITANGA BERYL KAKE ON BEHALF OF

TE URI O HAU ENVIRONMENTAL HOLDINGS LTD.

PLANNING

14 April 2026

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1. SUMMARY OF EVIDENCE

1.1. This evidence has been prepared on behalf of Te Uri o Hau Environmental Holdings Ltd. (**TUoH**) as it relates to submission (#367) on the PDP Hearing Topic 10 – Māori Purpose Zone ("**MPZ**"), and Hearing Topic 11 Sites and Areas of Significance to Māori ("**SASM**"). My evidence focuses on the responses and recommendations in both Section 42A Hearing Reports ("**s42A**"). I will address each Hearing Topic individually, but where there are corresponding issues, I will address these in the Overall Matters section presented in this evidence.

1.2. In summary, I consider the reporting officers for the Kaipara District Council ("**Council**") have attempted to be constructive with including parts of TUoH relief sought in their primary submission. In particular, the Reporting Officers have included components of our requested relief within this formal consultation process, notwithstanding that this consultation should have occurred before the notification of the PDP in March 2025. This is addressed in the Statement of Evidence from Fiona Kemp on behalf of Te Uri o Hau which I rely on and base this evidence on.

1.3. However, as a result of the inadequate engagement and consultation of KDC with TUoH and other mana whenua groups through the development of the PDP, a number of areas remain in disagreement and contention for TUoH. Therefore, I consider that further amendments are required in the MPZ and SASM chapters, and subsequent changes in other chapters of the PDP for consistent integration of mana whenua and Māori provisions.

1.4. For changes still sought specifically in relation to the MPZ:

(a) Definitions of Treaty Settlement Land and how it differs to Māori Land definitions under Te Ture Whenua Māori Land Act 1993

(b) The Operative Kaipara District Plan ("**ODP**") provisions for Treaty Settlement Land[1] and the policy framework that enables sustainable development on TSL, or future TSL that might be returned to iwi or hapū (i.e. through Commercial Redress or Right of First Refusal ("**RFR**") negotiations),

[1] See Operative Kaipara District Plan – Chapter 15B – Māori Purposes Treaty Settlement Land https://kaipara.isoplan.co.nz/eplan/rules/0/41/0/2074/0/144

(c) Disagreement with integration of Treaty Settlement Land in the MPZ chapter and the lack of higher order policy direction to efficiently and effectively provide for current and future development,
(d) The presumptive nature that the GRUZ has as an underlying zone over MPZ, TSL and papakainga developments
(e) The 'Treaty settlement overlay' that sits in isolation in the GRUZ, and
(f) impact of natural environment overlays on development of whenua Māori and TSL in the Kaipara District.

1.5. In summary, matters still in contention for the SASM chapter:
(a) Overview of the chapter and the proposed new wording
(b) The inclusion of an accidental discovery condition
(c) The inclusion of commercial forestry maintenance and operations infrastructure as a permitted activity within scheduled sites
(d) Mapping and identification of sites of significance and the inclusion of 17 sites of significance attached to the evidence Ms Kemp.

1.6. A matter of scope has been raised in the s42A report in relation to the Sites of Significance for Māori chapter. Te Uri o Hau's response to this issue will be addressed in the legal memorandum and submissions prepared by its legal counsel. For the purposes of my evidence, I have reviewed the evidence relating to the proposed sites and provide comment on the basis that scope is granted by the Panel.

2. INTRODUCTION

Qualifications and experience

2.1. My full name is Te Puawaitanga Beryl Kake. I am a planning consultant and Director of Kohu Strategy and Planning Ltd, an independent planning consultancy based in Te Tai Tokerau Northland. Although I am based in Northland, I also undertake planning work throughout the country in Auckland and Wellington. I have whakapapa/genealogical links to Ngāpuhi and Te Roroa in South Hokianga and the hapū Ngāti Korokoro, Ngāti Wharara and Te Pouka.

2.2. I have a Master of Arts in Political Science from the University of Auckland (First Class Honours), and a Post-Graduate Diploma in Planning and Resource Management from Massey University. I am Full Member of the New Zealand Planning Institute (NZPI), and a member of the Resource Management Law

Association (RMLA). I am an accredited hearings commissioner, and up to end of 2025, was a Commissioner for Plan Change 1 of the Natural Resources Plan (NRP) for Greater Wellington Regional Council which sought to implement the NPSFM. I have over 13 years of experience working in central government (MfE), multiple local authorities, and the private sector. This experience spans across roles in policy, strategic planning, resource consents and Notices of Requirement. This is summarised below with most recent and relevant experience:

- Principal Policy Advisor at Minister for the Environment on RM Reform and Urban Development; Māori Urban Planning Lead for Auckland Light Rail Ltd; Planning consultant for iwi and hapū authorities including Te Uri o Hau, Te Roroa, Te Kahu o Taonui; Planning contractor for Whangarei District Council Strategic Planning Team; Planning Consultant for Northland Regional Council (development of draft Freshwater Plan), individual whanau/family trusts and Whenua Māori Trusts seeking to develop papakainga on ancestral and general title land.
- Work Group Manager Northland, WSP (formerly Opus); Māori Outcomes Lead, Regulatory Services, Auckland Council; Principal Planner Auckland Council – Strategic and Policy Planning in Central and South Auckland; Policy Advisor, Independent Māori Statutory Board (IMSB), Auckland Council.

2.3. Although this is not an Environment Court hearing, I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in preparing this statement of evidence. Unless otherwise stated, this evidence is within my area of expertise, and where I rely on others evidence in preparing this statement, I have expressed this. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Involvement with PDP on behalf of Te Uri o Hau

2.4. I have assisted TUoH in preparing their primary submission to the PDP in June 2025. I have been further engaged by TUoH to prepare this statement in relation to my planning expertise.

2.5. I can confirm I have read the s.42A report on the MPZ and the s.42A on the SASM chapter. I can confirm I am familiar with TUoH's Treaty Settlement

legislation and wider aspirations and functions as a Post-Treaty Settlement Governance Entity ("**PSGE**").

Scope of evidence

2.6. In preparing this evidence I have reviewed the following relevant reports:

a. s.32 reports for SASMs and the s.32 Report for the MPZ
b. s.42A reports for SASMs, the s.42A report for the MPZ, the s.42A report for Part 1 Introduction and General Provisions.
c. Papakainga Issues and Options Paper prepared for KDC in 2021.

2.7. Due to issues of natural justice arising from TUoH's primary submission not being notified until February 2026, nor summarised correctly in the Summary of Decisions Requested (SDR) Report, TUoH have not been party to any prior hearings on other PDP topics up to this stage. This has resulted in relief sought in TUoH's primary submission not being included in analysis for Hearing Topic 3: Introduction and General Matters.[2] This evidence considers implications of this on TUoH's ability to input into the plan, as well on the coherence of provisions affecting tangata whenua provisions across the plan. Procedural and fairness matters are addressed separately in legal submissions.

2.8. I have provided some evidence in this statement on the topics that have proceeded in 2025 where it is relevant to the primary submission of TUoH. This includes Hearing Topic 3: Introduction and General Provisions where further planning consideration and analysis is required.

2.9. This statement expands on matters raised in the primary submission TUoH and also raises matters that were addressed by TUoH in input into the plan under Schedule 1

3. TREATY PRINCIPLES

3.1. The PDP must give effect to Part 2 of the RMA, including section 6(e), section 7, and section 8, which requires particular regard to be had to the principles of Te Tiriti o Waitangi. Relevant Treaty principles include, but are not limited to, active protection, partnership, and rangatiratanga.

[2] Notified on 15 January 2026, with hearings occurring on 23rd February to which TUoH was not a party to because we were not notified.

3.2. The PDP is also required to give effect to higher order planning instruments, including relevant objectives and policies within regional planning documents that relate to tangata whenua and Te Tiriti o Waitangi. These have been correctly identified in the relevant s 42A reports.

3.3. In this legislative and planning context, the principles of Te Tiriti reinforce and add significant weight to the obligation for the PDP to recognise and provide for Māori interests. This includes both the protection of Māori cultural heritage and taonga, and the ability for Māori to use, develop, and sustain their ancestral lands, waters, and other resources.

3.4. Treaty interests cannot be confined to a single chapter; they must be integrated throughout the PDP and embedded across all relevant provisions. As currently framed, the plan largely addresses matters affecting tangata whenua within the Māori Purpose Zone and the Sites of Significance chapters. While I support the inclusion of these chapters for their specific purposes, they are insufficient to address the broader cultural values and interests of tangata whenua across the remainder of the PDP. A more integrated and consistent approach is required to ensure these matters are recognised and provided for throughout all chapters and provisions.

4. OVERALL PROCEDURAL MATTERS

4.1. Procedural matters in how the provisions were developed in accordance with Part 2 of the RMA are in contention in my view as they do not adequately uphold these principles. These include principles of rangatiratanga, active protection, redress, and development, among others.

5. PLAN COHERENCE

5.1. In my view, there is incoherence with regards to the integration of Māori aspirations in relation to the hierarchy of provisions in the PDP and where these provisions intersect. For example, the underlying zone of the General Rural Urban Zone and the General Residential Zone, still have a presumptive nature over papakainga developments that are located in the Māori Purpose Zone. This includes the restrictive nature of the matters of discretion in these underlying zones, discussed further below in Table 3.

5.2. The Introduction and General Matters hearing also discussed the spatial layers and how they work in the PDP. I acknowledge the overlays will be discussed in separate hearing topics, but the context is important to the Treaty Settlement Overlay, as it is mentioned in the General Rural Zone chapter which is ambiguous and does not allow TSL to be developed to its full potential as discussed below.

5.3. In addition, the Introduction and General Provisions (Part 1) Chapter describe the relationship between spatial layers. It states that "*Rules for one spatial layer may stricter than rules in another spatial layer. The strictest rule will apply in these cases."* In analysing quickly the other Special Purpose Zones in Part 3 of the PDP, more permissive provisions are provided to these zones. This has been provided in summary below in Table 1 below.

Table 1. Summary of special purpose overview policy frameworks in PDP

Mangawhai Hills Special Purpose Zone	**Estuary Estates (Mangawhai Central)**	**Māori Purpose Zone**
The overview states (emphasis added): *.. provisions of the Mangawhai Hills special purpose zone apply in addition to the rules contained in Part 2: District-Wide Matters chapters. Where an activity is subject to a Special purpose zone rule and the activity status of that activity in the precinct is different to the activity status in the zone or in the district-wide matter rules, then* ***the activity status in the precinct takes precedence over the activity status in the zone or district-wide matter rules…***	The Overview and 'Other relevant Plan provisions' states (emphasis added): *The provisions contained in Part 2: District-Wide Matters chapters apply to the Estuary Estates special purpose zone* ***except where a rule in the Estuary Estates special purpose zone chapter is identified to override a provision contained in the District-Wide Matters chapters.***	The overview chapter sets out briefly the intent of what the Zone seeks to achieve, but is relatively constrained by other matters, described below (with emphasis added): *The Māori purpose zone gives effect to responsibilities under section 6(e) of the RMA to recognise and provide for the relationship of Māori with their ancestral land,* ***while also recognising and providing for other matters of national importance under section 6 (such as those managed by the Natural Environment Values chapters in Part 2 of this Plan).***

5.4. In my opinion, these provisions do not seek to give effect to Treaty settlement aspirations and MPZ objectives for the MPZ chapter discussed further below, including Part 2 of the PDP that is the Natural Environment Values section of the Plan.

5.5. As a result of the inability of TUoH to comment on the General Provisions and Introductory Chapter that took place in Hearing 3, TUoH have not been able to comment on how the Plan works in practice. Including the points raised in the primary submission of TUoH where relief sought was to include a description that the MPZ prevails over any underlying zone which would also have extended to the section of How the Plan Works in practice.

5.6. If TUoH had been party to Hearing Topic 3 our evidence would have sought the following provision is added to Part 1: Introduction and General Provisions and subsequent chapters where relevant:

'*where there is contention with provisions in the MPZ and other provisions in other parts of the Plan, the more permissive rules would apply for developments in the MPZ.*

5.7. In my view, this would seek to give effect to the aspirations Māori have to develop whenua Māori and TSL more broadly. In practice, developers of whenua Māori and TSL would still be required to meet certain regulations and standards under this Plan and other legislation and Regulations, such as the Building Act and any other National Environmental Standards and National Policy Statements.

6. MĀORI PURPOSE ZONE

The importance of Māori Land and Treaty Settlement Land

6.1. I agree with the overall description of whenua Māori in the Kaipara District being around 3% and also the general description of TSL being around 2% of the total of KDC land (excluding RFR). This land is largely made up in coastal and rural areas.

6.2. I support the description in the s.42A that The MPZ enables Tangata Whenua/Mana Whenua to exercise their customary responsibilities as kaitiaki and to undertake a range of 'Māori purpose activities' activities that reflect Māori customs, values and practices.

6.3. When Māori Landowners look to utilisation and development of their land, they often look to kaupapa Māori protocols and values as a basis for their business models, for example, profit focused with benefits to iwi and hapū intergenerational benefits, including social, cultural and environmental outcomes. These protocols provide an important differentiation between standard commercial ventures. This is generally applied to Treaty Settlement Land developments as well.

Treaty settlement redress

6.4. The significance of Treaty settlement outcomes for mana whenua is clear. They seek to compensate over 180 years of loss, deprivation, and provide a modest platform towards restoration of the people from iwi or hapū who have been affected by breaches of the Treaty of Waitangi/Te Tiriti o Waitangi.

6.5. As acknowledged by the Reporting Officer, Whenua Māori is unique in its own right and regulated under Te Ture Whenua Māori Act 1993. But whenua Māori has also been alienated from Māori by the Crown through the 1800s as a result of land confiscations, and the individualisation of whenua Māori under the Native Lands Act 1862.[3] As a result Māori have since been trying to develop on their whenua for the betterment of whānau for almost 170 years.

6.6. The PDP seeks to consolidate the Operative Kaipara District Plan (ODP) Chapter 15A – Māori Purposes Māori Land Chapter and Chapter 15B – Māori Purposes Treaty Settlement Chapter, which I agree with in some parts. But little analysis is provided in my view that warrants the consolidation of all the provisions, only to provide more consistency and less duplication in the Plan. By consolidating the chapters there seems to be a large gap in my opinion with the fact there are nuances between whenua Māori as defined under Te Ture Whenua Māori Act and Treaty Settlement Land returned (or in negotiation) in Treaty settlement legislation, including RFR land which is yet to be returned land but easily identified in Treaty settlement legislation or Deeds of Settlement.

6.7. In reaching decisions on the PDP any proposed restrictions on the ability of TUoH and other mana whenua groups to use their lands, waters, including areas that

[3] https://teara.govt.nz/en/zoomify/20037/native-lands-act-1862#:~:text=The%20Native%20Lands%20Act%20of%201862%20established,ahuwhenua%20*%20Created%20the%20Native%20Land%20Court

have been included via Treaty settlement redress, and whether those restrictions in the PDP are Treaty compliant, need to be taken into account and an appropriate balance must be reached, providing for the ability for Māori to use, develop, and sustain their ancestral lands, waters, and other resources against other effects being addressed through the underlying rules in the applicable zones.

6.8. While the Treaty settlement process is separate to the RMA, there are areas of overlap:

a) Treaty settlements have a direct intersection with RMA decision-making.
b) Statutory acknowledgements are examples of express statutory overlap (as between Treaty settlement legislation and the RMA)
c) Treaty settlement redress outcomes (especially land transfers and rights and acknowledgements over natural resources) form part of the 'ancestral lands, water, sites, wāhi tapu and other tāonga' to be recognised and provided for under Part 2, as well as having Treaty principles and national interest implications.

6.9. To understand the relationship of mana whenua with Treaty settlement redress interests, it is necessary to understand the context associated with Treaty settlements. This includes:

a) Statutory and historical context associated with Crown breaches of the Treaty and mana whenua grievances
b) Spiritual and cultural loss which occurred as a result of breaches of the Treaty by the Crown
c) Limitations on Treaty settlement redress to mana whenua
d) Final settlements confirming settlements as one off events
e) The importance of Treaty settlement redress as a vehicle for the restoration of cultural and economic well-being of mana whenua.

6.10. Through Treaty settlements, mana whenua acquire small fractions of the actual losses they have faced a part of full and final settlement. As such, it is critical that through RMA mechanisms, such as the PDP and other planning documents, these enable Treaty settlement redress to be realised to achieve its full potential as much as possible. Thus, assisting with restoring the economic and cultural base of mana whenua is fundamental through the PDP.

6.11. The MPZ Chapter contains clear direction on the use of whenua Māori in relation to papakāinga developments, which I support. However, it only emphasises the development of papakainga and Marae based activities which is limiting in my view for future development opportunities TUoH seek. These aspirations are set out in the Treaty Settlement legislation[4] the Deed of Settlement,[5] and further in the Iwi Management Plan Te Kaitiakitanga o Te Taiao.[6]

6.12. As a result of the consolidation of the ODP TSL provisions into the MPZ chapter and other parts of the PDP, the TSL provisions have been diluted and reduced substantially that in my opinion will not result in delivering the aspirations of TUoH to develop TSL or whenua Māori in the future.

6.13. I have summarised these provisions below for the Panels reference, however have not gone into specific wording on the provisions, which are defined in Chapter 15B of the Operative Kaipara District Plan.[7] Table 2 below summarises some of the key differences in the provisions in the PDP and the ODP.

Table 2. Summary of ODP and PDP Treaty Settlement provisions

Operative Kaipara District Plan: Chapter 15B – Māori Purposes Treaty Settlement Land	**PDP for Kaipara – Māori Purpose Zone**
Introduction describes Treaty settlement land and grievances caused by breaches of the Crown, as well as an introduction on how to use the Chapter, including integration with other parts of the plan with hyperlinks.	The MPZ does not describe TSL and reference any issues associated with Treaty settlement land development for PSGEs. Nor does it define RFR land which is discussed further below. Rather it refers to "small scale commercial activities" which does not seem to fit the overall Treaty settlement aspirations of TUoH or PSGEs who have commercial redress land from negotiations with the Crown.
There are **16 Issues** identified in the	There are no issues identified for TSL

[4] https://www.legislation.govt.nz/act/public/2002/36/en/latest/#DLM155544 ,
[5] https://www.govt.nz/assets/Documents/OTS/Te-Uri-o-Hau/Te-Uri-o-Hau-Deed-of-Settlement-13-Dec-2000.pdf
[6] See Objective 10,and Section 41 or Te Uri o Hau Environmental Plan 2011.
[7] See for reference: https://kaipara.isoplan.co.nz/eplan/rules/0/41/0/2074/0/144

chapter that set out key issues surrounding TSL development.	or whenua Māori
There are **13 objectives** identified that seek to give effect and respond to the Issues identified in the chapeau.	There are **2 objectives** in the MPZ **MPZ-O1** is an overarching enablement objective for 'Māori purpose activities' **MPZ-O2** seeks to support Objective 1 by further enabling social, cultural and economic development and ongoing relationship of Māori with ancestral land. The definition of ancestral is limiting in how it applies to TSL if a all.
There are **28 policies** (including three additional policies under policy 15B.6.11a – c)	There are 2 policies in the MPZ with "particular regard to" subsequent clauses that seek to enable development on whenua Māori in the coastal and natural environment.
There are **7 Methods and 10 Other Method's** that seek to respond to the Issues in the chapeau and implement the overarching objectives and policies.	There are **11 Rules** with corresponding matters of discretion where compliance is not reached. There is also one rule in the General Rural Zone (GRUZ-11) Papakainga Housing, that mentions Treaty Settlement Legislation as a RDA. Where these activities cannot comply with the Rule in this Zone, there a re a range of matters of Discretion that apply.
There are **10 Outcomes** identified for TSL in this chapter	There are **7 Standards** that range from having an iwi, hapu or whanau development plan, to height in relation to boundary standards, to setbacks and maximum building coverage requirements. With a number of matters over which discretion is restricted under each Standard.
There are **5 Rules** in relation to Treaty Settlement Land There are approximately **32 Performance Standards** with corresponding Assessment Criteria where standards are not met.	

3 Rules for controlled TSL Subdivision **4 Rules** in relation to RDA TSL Subdivisions **3 Rules** in relation to Discretionary TSL Subdivision **11 Performance Standards** for TSL zone subdivision	

6.14. In my opinion, TSL needs bespoke planning provisions that enable future development (including economic aspirations) of that land, which in turn uphold the reasons why TSL was returned to TUoH and other mana whenua in the first instance.

6.15. The s.32 for the MPZ states that under the ODP there are separate objectives and policies for Māori and Treaty Settlement Land, and therefore different objectives and policies that seek different outcomes for these land types, which I agree with. I disagree though that because the rule framework is the same, all Māori Land and Treaty Settlement Land provisions should be combined and treated the same. Analysis focuses primarily on papakainga developments only and not the economic aspirations PSGEs may have in relation to developing TSL. This is largely based on the Papakainga Issues and Options paper which is credible in my view in analysing constraints and opportunities for papakainga, but does not consider more broader issues or opportunities for Treaty Settlement Land development.

6.16. Furthermore, Māori Land and TSL developments are further constrained by the overarching policy framework that natural resource overlays have, therefore complicating growth for Māori even further. Overlays as a topic in contention is discussed further below. I agree with the Reporting Officers description that whenua Māori has long been underutilised for a number of reasons which I do not intend on repeating here. But in practice, the regulatory framework for developing papakainga on whenua Māori and TSL needs to be as practical as possible with fewer regulatory controls where warranted. I have proposed some tracked changes in Table 1. below that seeks to address this.

6.17. Overall, in my opinion there is a lack of evidence in the Reporting Officers s.42A as to why the Treaty Settlement provisions provided for in Chapter 15B

of the ODP have been removed. Furthermore, the s.42A has not addressed the relief sought by Te Uri o Hau, which I do not wish to repeat here, in the primary submission on pages 35 – 36 where it was recommended to re-instate the Treaty settlement provisions. I am willing to work with the Council on ensuring these provisions are fit for purpose under the new context of the PDP if they need further assistance.

6.18. There are strong grounds for a more enabling framework for Treaty settlement land including by reference to the Treaty principles, the strong policy direction in the RPS and Kaipara Spatial Plan and the fact that Treaty settlement lands will be the only land base for a number of Mana Whenua groups. The more restrictive approach to Treaty settlement land disproportionately penalises mana whenua groups. As such, TUoH seek more enabling rules for Māori land and TSL developments.

Papakainga provisions

6.19. While TUoH supports the enablement of more papakainga developments in the PDP, it is not clear how the MPZ or GRUZ chapters adequately provide for this when it is constrained by the number of matters of discretion. For instance, it states that the General Rural Zone provisions support papakainga housing. However, the provision of papakainga housing must be "clustered" to enable the balance of land to remain productive use and avoid any reverse sensitivity effects on primary production activities. In my opinion, this policy framework does not support papakainga developments in the rural zone as much as it could, because of the avoidance policies in the General Rural Zone and the requirement of avoiding reverse sensitivity effects. It is further assumed that there is an overarching presumptive nature the GRUZ provisions have over the MPZ because the GRUZ provisions have been compared to the MPZ in the s.42A, which is incomparable in my view.

6.20. As a result of the MPZ being compared with the General Rural Zone (GRUZ) the Reporting Officer has compared concepts that are not equally the same. This includes the application of reverse sensitivity effects which should not apply to MPZ chapter or TSL development as a result of historical grievances and disenfranchisement of Māori from their whenua, which is described in the s.32 and s.42A reports for this topic.

6.21. Although the National Environmental Standards for Papakainga (NES-Papakainga)[8] have not been gazetted, consultation occurred on the draft provisions in 2025. It is worth noting that in the draft provisions for the NES there are more permissive provisions than the MPZ as notified in the PDP, for example where papakainga developments do not comply with an underlying zone.[9] It is expected the NES – Papakainga will be gazetted in mid to end 2026 where the overall RM Reform packages, including national direction and the Natural Environment Bill and Planning Bills will be confirmed. As such, the Council should try and align the MPZ provisions with the draft NES-Papakainga to ensure there is alignment as much as possible now to avoid further changes.

Table 3. Papakainga provisions in GRUZ, MPZ and my proposed tracked changes

GRUZ – R11 Papakainga housing	**MPZ – R2 Māori purpose activity (s.42A version)**	**My proposed tracked changed version**
Activity status RDA where: a. The activity is undertaken on ... ... ii. Land transferred to an Iwi Trust or Authority under Treaty Settlement Legislation;	Activity status: Permitted Where: a. Papakāinga housing does not exceed 10 residential units per site; and b. The activity complies with MPZ-S1 whānau, hapū or iwi development plan, except if the activity is papakāinga housing, then a development plan is not required if the number of residential units is 3 or less.	**For Treaty Settlement Land**: In consultation with TUoH and other mana whenua, the council needs to consider re-instating TSL provisions, including objectives, policies rules, standards and matters of discretion in Chapter 15B of the ODP **For MPZ – R2:** Increase the papakainga residential units to 30 as a permitted activity where the gross land area of the site is 30ha or more. Remove the requirement for whanau, hapū or iwi development plans up to 30 dwellings.
Activity status when compliance not achieved: Discretionary **Matters over which discretion is restricted:**	**Activity status when compliance not achieved**: Restricted Discretionary **Matters over which**	**Matters of Discretion:** Matters of discretion should only be limited to wastewater, stormwater and potable water services

[8] https://environment.govt.nz/assets/publications/RMA/attachment-1.7-national-environmental-standards-for-papakainga.pdf

[9] See RD2 where papakainga developments that do not comply with the applicable rules in the underlying zone.

a. Whether there is a whānau, hapū or iwi development plan; b. The historical reasons why the land was transferred to general title; c. Demonstration of appropriate legal mechanism(s) to ensure that the land is maintained in whānau ownership; d. Impacts on the transport network and the safe design of site entry and exit; e. Measures to manage adverse effects on the amenity values of other sites including shading, dominance, privacy and access to sunlight/daylight; f. Landscaping to mitigate impacts on visual amenity values; and g. Scale, design and location of buildings within the site to mitigate potential reverse sensitivity effects	**discretion is restricted**: a. Impacts on the transport network and the safe design of site entry and exit b. Measures to manage adverse effects on the amenity values of other sites including shading, dominance, privacy and access to sunlight/daylight; c. Any adverse effects on cultural values or rural character and any proposed mitigation; and d. Scale, design and location of buildings within the site to mitigate potential reverse sensitivity effects.	on papakainga developments. These may be reticulated systems that are joined up to the main network of a town, or could be on-site water systems such as septic and water tanks. **For MPZ-R2:** Remove all matters of discretion from a) - d) **For GRUZ-R11:** Remove all matters of discretion listed from a) - g).

Whānau, hapū or iwi development plans

6.22. While I acknowledge the Reporting Officer has recommended changes to reduce the number of homes for papakāinga developments needing a Whanau, Hapu or Iwi Development Plan for 3 houses or more, I disagree with this number still and the overall intent of requiring a Development Plan for whenua Māori or TSL developments. Although this number differs to the original number in the TUoH submission, I have reconsidered the overall intent of the PDP to provide more papakainga developments on whenua Māori and TSL and the overarching intent of the PDP to provide further papakainga developments.

6.23. While the rules are more permissive for 3 dwellings on whenua Māori, there is still a requirement for a minimal lot size (e.g. 36ha.). In addition to

relevant standards under the PDP needing to be met, compliance with the Building Code and the Building Act will also be required, therefore additional regulatory checks and balances are also still in place.

6.24. I disagree though that papakainga still require a development plan for up to 30 homes. This number differs from the primary submission of TUoH, but in my view it would be expected that building and resource consent requirements would still need to be met irrespective of a development plan being provided for this number of homes.

6.25. As described in the s.42A the nature of whenua Māori is unique and, in my view, should not be compared to general title land. It is difficult and incompatible to compare papakāinga developments on whenua Māori to other developments on general title land in an urban or rural zones. Therefore, I disagree with the Reporting Officer's analysis of this.

6.26. TSL needs bespoke provisions that seek to enable the intent of how TSL was returned or will be returned by the Crown through Treaty settlement negotiations.

Reverse sensitivity

6.27. Reverse sensitivity effects as a matter of discretion should not apply to MPZ and TSL provisions and developments. Largely because of the extensive issues around the development on these lands by Māori which is expressed in the s.42A which I don't intend to repeat here.

6.28. Reverse sensitivity effects are subjective in nature and can have a significant impact on Māori including the ability of effects be based on noise, traffic, or activities that arise from tangihanga, kapa haka events or other cultural activities.

6.29. Furthermore, the reverse sensitivity provisions in the GRUZ and MPZ seem to limit the overall aspiration of the PDP to provide for more papakainga developments, which would largely be based in primary production zones or coastal areas due to the nature and make up of whenua Māori and TSL described above. Therefore, I have provided some additional wording in red and underlined below:

Xxx. *Protect marae and papakainga developments and the future use of Māori and Treaty settlement land from reverse sensitivity effects.*

Application of overlays to MPZ and Treaty settlement land

6.30. The introduction of a Treaty Settlement Overlay in the PDP seems irrelevant in my opinion as the underlying zone (e.g. GRUZ) will have more restrictive controls over TSL even when the Treaty Settlement Overlay applies. Therefore, in my opinion the Treaty Settlement Overlay doesn't provide much of a purpose for supporting the development of TSL, rather it is more of an information overlay for plan users and decision makers to take into account. Furthermore, it is unclear how the Treaty Settlement Overlay will work in practice as there is no guiding note on how to consider the rule framework with respect to upholding Treaty settlement legislation and aspirations.

6.31. In the Māori Purpose Zone a "Treaty Settlement Overlay" is mentioned but there is no corresponding policy framework in the PDP for how a Treaty Settlement Overlay works or should be considered by plan users and decision makers where there are other overlays.

6.32. For comparison, a Treaty Settlement Overlay has been introduced in the Far North District Plan with corresponding provisions. I don't intend to repeat the provisions here but refer the Panel to Part 2: District Wide Matters/ Treaty settlement land overlay.[10]

6.33. The Reporting Officers s.42A (para. 13) sates that TSL is identified on Planning Maps as Treaty Settlement Overlay as a Context and Information Layer only, and TSL is referred in the underlying zone chapters e.g. GRUZ-R11 Papakainga. I disagree with this approach because the underlying policy framework for the GRUZ does not adequately provide for the aspirations of iwi and hapu who have gone through Treaty negotiations with the Crown, or provide for future aspirations of mana whenua who are currently going through Settlement negotiations.

6.34. The councils s.32 Report (at Para 40) on MPZ also highlights the number of overlays in the PDP that affect MPZ and Treaty Settlement Land that I do not intend on repeating here, but refer the Panel to. In summary though, there is over 3,00ha of Māori Land and TSL in the Coastal Environment, 1,800ha in the

[10] Available online here: https://farnorth.isoplan.co.nz/eplan/rules/0/31/0/0/0/81

Outstanding Natural Landscapes (ONLs), approximately 800ha in the Outstanding Natural Character (ONC), and just under 350ha in the Outstanding Natural Features (ONFs).

6.35. As a result of the above, there needs to be further site-by-site analysis for whenua Māori that is in ownership of whanau or Māori Land Trusts to ensure the planning framework suits their purposes, needs and aspirations. This should be extended to TSL across the rohe to assess whether further changes are required to the PDP. TUoH welcome the opportunity to work with the Council on doing this through future engagement, either through this hearings process, or via expert witness conferencing if that is the best approach for doing so.

Definitions

6.36. The Treaty settlement land definition in the PDP does not properly reflect the broad range of Treaty settlement land that has been negotiated and returned to PSGEs. Alternative wording was provided in the TUoH primary submission which include RFR Land.

6.37. I agree with the reporting officer in the reliance on the definition of whenua Māori and associated activities as provided for under Te Ture Whenua Māori Act. I do not however agree that TSL should be absorbed into the definition of whenua Māori because of the nuances associated with Treaty Settlement Land. The definition seeks to only support papakainga developments on TSL which in my view is a narrow interpretation.

7. SITES AND AREAS OF SIGNIFICANCE TO MĀORI

7.1. This chapter is of high significance to TUoH not only because of the association TUoH has to scheduled (or yet to be scheduled sites) that protection from inappropriate development is sought. Overall TUoH support this chapter and its overall intent, however there are matters which are still in contention. Mainly:

A) The Overview section of this chapter and how it describes mana whenua values associated with Sites of Significance in the Kaipara District. This description should be developed in partnership with mana whenua
B) The inclusion of an accidental discovery condition, because TUoH has not been involved in drafting this condition, and we seek that the wording be re-drafted to include TUoH's current practices around cultural monitoring,

as explained in the Te Uri o Hau Cultural Assessment and Monitoring Protocols and Policies document[11]

C) The inclusion of the maintenance and operations of commercial forestry in SASM-R3 as a permitted activity

D) Maintenance and operation of existing infrastructure on sites and areas of significance.

7.2. Mana Whenua values and relationships with ancestral lands, waters, sites, wāhi tapu, and tāonga include both tangible and intangible values and these are the matters that need to be assessed and provided for. It is the effects on the mana, tapu and mauri of physical resources that are the important. It is what the physical activities represent in the context of these customs and tikanga that is important and what should be recognised and provided for.

Identification of sites and areas of significance to Māori

7.3. Along with the sites that are identified by TUoH in Schedule 3, there are a number of additional sites that are yet to be scheduled. I refer to Fiona Kemp's evidence in terms of why these sites are significant, and the inadequate consultation and engagement that occurred prior to the notification of the PDP in terms of the process for scheduling sites, including the importance of Cultural Landscapes and why this definition may be required in the PDP, to which I defer to Ms Kemps evidence on.

7.4. Overall, I agree there needs to be provisions that support the identification and protection of sites and areas of significance to Māori that are to be scheduled in the PDP. The SASM objectives and policies seek to achieve this which I support.

7.5. In addition to the existing objectives and policies, where a development occurs on a site, and there are negative effects on the cultural values of mana whenua, there should be further provisions that support the appropriate design and incorporation of mātauranga Māori and pūrakau recording why a site is significant. I've proposed some additional wording below:

XX. Promote the use of design approaches, materials, and construction techniques that are appropriate for areas with known settlement and occupation by the tūpuna of Mana Whenua.

[11] Available online here: d42941_d4343f4f66594836a9c97b59c7b3d32d.pdf

7.6. In addition to the above wording, I believe there should be further policies that support and promote effective engagement with applicants when the effects on mana whenua cultural values and sites and significance are affected. The proposed wording has been provided in red below and underlined, and adapted by the Far North Proposed District Plan:

XXX Protect sites and areas of significance to Māori by:

a. *ensuring that tangata whenua can actively participate in resource management processes which involve sites and areas of significance to Māori including those identified in Schedule 3 - Sites and areas of significance to Māori;*
b. *requiring cultural impact assessments for activities likely to result in adverse effects on scheduled sites and areas of significance to Māori;*
c. *recognition of the holistic nature of the Māori worldview and the exercise of kaitiakitanga;*
d. *acknowledging matauranga Māori;*
e. *having regard to Iwi/Hapū environmental management plans; and*
f. *restricting activities that compromise important spiritual and cultural values held by tangata whenua and/or the wider community.*

7.7. In addition to a new policy ensuring effective engagement with mana whenua occurs when cultural values and sites of significance are affected, an additional policy is sought through this evidence around what consideration should be given when adverse effects on mana whenua/tangata whenua values are triggered by resource consent applications.

XXX Consider the following when assessing applications for land use and subdivision that may result in adverse effects on the relationship of tangata whenua with sites and areas of significance to Māori:

a. *the outcomes of consultation undertaken with iwi, hapū or marae that has an association to the site orarea;*
b. *whether a cultural impact assessment has been undertaken by a suitably qualified person who is acknowledged/endorsed by the iwi, hapū or relevant marae, and any recommended conditions and/or monitoring to achieve desired outcomes;*
c. *any iwi/hapū environmental management plans lodged with Council;*
d. *that tangata whenua are specialists in the tikanga of their hapū or iwi, including when preparing or undertaking a cultural impact assessment; and*
e. *any protection, preservation or enhancement proposed.*

7.8. Cross reference to the additional policies provided in red below and above should also be in Part 1: Introduction and General Matters where there is a section on Tangata Whenua Engagement. I believe these additional clauses are in scope as this relief was also in our primary submission in Appendix 2 and the overall relief sought in Appendix 1 as well as the clear objectives and policies in the IHEMP for TUoH which does not seem to have been considered in the s.32 Report on SASMs.

7.9. A non-statutory alert layer could also work as an information spatial layer in the PDP where the general location of the sites in question are i.e. the cultural landscape. This could be used to help support mana whenua groups who are yet to schedule sites via Schedule 1 process, which can be costly and resource intensive. The appropriate buffers, rules and criterion for why these sites (in a non-statutory layer) are developed will be critical. Furthermore, a non-statutory alert layer could be useful for council resource consent officers when the effects on mana whenua values need to be considered. Proposed wording for inclusion as a method has been provided:

XX. Identify sites of and areas of cultural heritage which are not included in the sites and places of significance schedule or overlay as a non-statutory alert layer.

7.10. In particular if there is sensitive information that mana whenua do not wish to publicly notify for certain reasons. Proposed wording has also been provided below:

XX. Protect sensitive information about the values and associations of Mana Whenua in relation to their cultural heritage where disclosure of such information may put a site, place or area at risk of destruction or degradation.

7.11. While the additional wording has not been provided in the primary submission of TUoH it is important that an appropriate policy framework is in the PDP that supports the aspirations of mana whenua especially when sites and areas of significance are in question. This also seeks to give effect to s.6(e), s.7(a) and s.8 of the RMA. Importantly, the additional wording seeking to protect sensitive information about the values mana whenua have associated to a place ultimately provide another mechanism of protecting mana whenua cultural

heritage from inappropriate subdivision or development. In my opinion, it is also useful for the operational practice of council to have non-statutory methods in place to support mana whenua values from being further degraded, and a non-statutory alert layer is another mechanism that provides this.

7.12. Furthermore this approach could also support the future scheduling of sites in the PDP through a formal Schedule 1 process, namely this process could support:

a) A proactively designed work programme developed in partnership with mana whenua in Kaipara, with a view to scheduling additional sites in future Council plan changes.
b) A Council-funded proactive work programme that supports the identification of cultural landscapes in Kaipara, determining their key characteristics and identifying mechanisms to protect and enhance mana whenua values associated with those landscapes.
c) A precautionary approach that develops a spatial layer identifying mana whenua values across the district, supporting the creation of a future Regional Spatial Plan under the Planning Bill currently before Parliament.
d) A requirement for cultural impact assessments or cultural value assessments to be prepared when subdivision or development may affect mana whenua cultural heritage.

7.13. I acknowledge that some of the proposed provisions could provide some uncertainty for developers and landowners. However I believe that requiring an assessment that describes the level of significance to mana whenua identifies where, how and why cultural heritage of that place is significant to Māori and why it should be protected or managed in a suitable way. This would be no different to requiring a natural landscape assessment for instance, where the landscape values of a site might be described if present in an area. As a result of this, an additional policy around how the council supports land owners to manage, maintain, and preserve sites of significance to MAori could be used to ensure on-going dialogue is created between the Council, resource consent applciatns, land owners and mana hwenua. This proposed wording has been provided in red and italics below and adapted by the Far North Proposed District Plan (SAMS-P5):

XXX Support land owners to manage, maintain and preserve sites and areas of significance to Māori by:

a. *increasing awareness, understanding and appreciation within the community of the presence and importance of sites and areas of significance to Māori;*
b. *encouraging land owners to engage with marae, whanau, hapū and iwi to develop positive working relationships in regard to the on-going management and/or protection of sites and areas of significance to Māori;*
c. *providing assistance to land owners to preserve, maintain and enhance sites and areas of significance to Māori; and*
d. *promoting the use of matauranga Māori, tikanga and kaitiakitanga, in collaboration with tangata whenua, to manage, maintain and preserve sites and areas of significance to Māori.*

Overview of SASM chapter

7.14. In principle I agree with the intent of including more description in the Overview chapter of why sites are of significance to mana whenua from the area. However, I do not agree that the wording from the RPS should be duplicated here. Instead the Council should work with mana whenua groups to confirm this description in the sense that it relates to the immediate rohe of Kaipara and why sites and areas are of significance to them, as opposed to the region of Northland as a whole which is what the RPS description provides. In essence, there is a requirement for plan users who may not be familiar with the significance to understand why the area is important for mana whenua. The appropriate description of the area to mana whenua should not be underestimated by the Council, rather a more accurate description drafted with mana whenua should be provided in the PDP.

The inclusion of significant freshwater bodies

7.15. TUoH agree with the inclusion of wording that seeks to protect freshwater sites of significance to Māori, in particular the inclusion of Wairoa Awa by James Barrett on behalf of Tangiteroria Marae (#70.1). However, TUoH wish to be engaged appropriately to confirm the addition of freshwater sites of significance to mana whenua, including but not limited to, the freshwater bodies listed in our IHEMP 'Te Uri o Hau Kaitiakitanga o Te Taiao'. This could also extend to other wai Māori in our rohe, including but not limited to the Dune Lakes in and around Pouto Peninsula.

The inclusion of an accidental discovery condition

7.16. The inclusion of an accidental discovery condition is important, and TUoH supports this in principle. However, TUoH would like to amend this description based on their tikanga Māori practices current practice, and reference to the TUOH Cultural Monitoring Protocols. For more broader wording, the council could refer to other examples across the country for example the Accidental Discovery Rule in Chapter E12 Land Disturbance of the Auckland Unitary Plan.[12] This Standard should also apply to the Earthworks chapter in the PDP.

The inclusion of commercial forestry maintenance and operations as a permitted activity

7.17. While TUoH understands the importance of continued operations in forestry in the Kaipara District, we cannot support this as a permitted activity at this stage. Including commercial forestry maintenance and operations as a permitted activity increases the scale, intensity, and cumulative effects of disturbance within or adjacent to SASMs. Unlike typical farm infrastructure (e.g. fence posts, small drains) forestry infrastructure can include skid sites, landings, forestry roads, culverts, and heavy machinery access. This infrastructure is not minor and these activities pose a higher risk of accidental damage or destruction to wāhi tapu, urupā, and archaeological features that may not be visible. In turn this increases effects on the cultural values for TUoH.

Infrastructure

7.18. I understand the Council has amended SASM-P3(5) with the following tracked changes in response to Northpower Ltd.

SASM-P3	Activities enabled on scheduled sites
Enable the following activities to occur on scheduled sites and areas of significance to Māori where the associated cultural, spiritual and historical values and relationships will be protected: 1. Land disturbance; 2. Animal grazing, pasture management and pest management; 3. Cultivation and small-scale earthworks; 4. Maintenance, repair, alteration, demolition, or removal of existing buildings and structures; 5. Maintenance, operation, upgrading within the existing footprint,[4] and repair of existing infrastructure; 6. Cultural practices carried out in accordance with tikanga Māori.	

7.19. While I understand the importance of upgrading and maintaining infrastructure especially if it is critical infrastructure, there is some disagreement

[12] See Standard E12 Land disturbance - District.pdf

I have with this additional wording. Mainly due to the historical nature that infrastructure have been built on cultural sites and some of the greatest effects on cultural values have occurred as a result of that. For example, the loss of maunga or cultural landscapes due to quarrying or construction; the discharge of offensive wastewater to important coastal and freshwater bodies; transmission lines that run across whenua Māori blocks; and the compulsory acquisition under the Public Works Act for roading or other purposes. My view is that there should be very strong directives in the PDP to Infrastructure providers that they are to avoid locating infrastructure that affects sites to Māori in the first place. Once established, infrastructure providers must continue dialogue with those mana whenua groups to ensure further damage is avoided and managed.